IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8542 OF 2004.

Aba Bala Kolekar, since deceased
by his legal heirs
1A) Bhimrao Aba Kolekar & ors. ... Petitioners.
V/s.
Biru Sakharam Kolekar, since
deceased by his legal heirs
1A. Bhavan Biru Kolekar & ors. .. Respondents.

Shri Sandesh Patil for the petitioners.

CORAM: R.C.CHAVAN,J

DATED: 11th January 2007.

P.C.:

. By this petition, the original defendant in Reg.Civil Suit No.155/1981 before the Civil Judge, SD, Islampur, takes exception to the order passed by the Additional District Judge, Islampur, rejecting the application for amendment to written statement and for tendering additional evidence.

2. I have heard Advocate Shri Patil for the petitioners. He does not dispute that the petitioner had filed written statement wherein petitioner had stated that he had purchased by registered sale deed dated 10.8.1973 for a sum of Rs.1,000/- land admeasuring 96’ east-west and 51’ north-south. He had stated that this land was purchased after measurement. The learned trial

Judge after considering evidence tendered, decreed the suit. Petitioner got rectification deed executed on 27.1.2004 during the pendency of the appeal. Petitioner had sought amendment to the written statement to contend that land purchased was admeasuring 96’ x 56’ as mentioned in the rectification deed, and wants to tender evidence to that effect. Both the applications (Ex.55 and 57) were rejected by the Additional District Judge, Islampur.

3. Learned Counsel for the petitioner relying upon a judgment of this Court in the case of **Mudra Salt and Chemical Industries vs. Collector, Thane and others, 2001(3) Mh.L.J. 151,** submitted that while considering application for amendment the Court need not, or ought not to, go into alleged falsity of the case in the amendment application, nor the Court should give its findings on merits of the amendment sought without first allowing the amendment, framing the issue therein and then allowing both the sides to adduce evidence. I am afraid, ratio of the said judgment would not apply to the petitioner’s case. It is not the question of correctness or the falsity of the petitioner’s pleadings. But the question is of taking different stands and changing nature of the case on which parties had gone for trial. Petitioner

had specifically stated that property purchased after measurement was 95′ x 51′. It would not be open for the petitioner now to contend at the appellate stage that site purchased was 96′x 56′ because he could secure document of rectification deed during the pendency of the appeal after suit was disposed of. Therefore, it cannot be said that the Additional District Judge has committed an error in rejecting applications filed by the petitioner. Petitioner has not made out any case for invocation of jurisdiction under Article 227 of the Constitution of India. Petition is, therefore, dismissed. Needless to state that the learned Appellate Judge shall decide the appeal without considering observations made in this order.

(R.C.CHAVAN,J.)